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U.S. Citizenship and Immigration Services

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FILE: WAC 04 222 51017 Office: CALIFORNIA SERVICE CENTER Date: MAR 13 2007

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will remain denied.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a public school district that wishes to employ the beneficiary as a high school mathematics teacher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO affirmed the director's decision and dismissed the appeal on March 8, 2006.

A detailed discussion of the relevant statute, regulations, and case law appears in the AAO's prior decision and is incorporated here by reference. By way of a brief summary, section 203(b)(2)(A) of the Act makes immigrant visas available to alien members of the professions holding advanced degrees whose services in the sciences, arts, professions, or business are sought by an employer in the United States. Section 203(b)(2)(B) of the Act waives the job offer requirement if it is in the national interest to do so. The statute and regulations offer no relevant guidance as to the requirements for the national interest waiver, and therefore the principal guidance now in effect is contained in *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998). The petitioner must show that the alien seeks employment in an area of substantial intrinsic merit; that the proposed benefit will be national in scope; and that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

In dismissing the appeal, the AAO emphasized two particular findings. First, the AAO found that the petitioner had failed to demonstrate that the beneficiary's work as a high school mathematics teacher lacks national scope. Second, the petitioner's repeated claims regarding a shortage of qualified teachers is not a valid basis for a national interest waiver. The AAO supported both of these findings by citing *Matter of New York State Dept. of Transportation*, which, as a published precedent decision, constitutes binding case law.

On motion, counsel argues that the waiver application was based not on a local labor shortage, but rather on a "national shortage in a specific area that has a profound effect on the future of the United States." Counsel continues: "In illustration, it was announced on March 23, 2006 that California claimed the *second* lowest percentage of high school graduates who continued their education in a college or university." As distressing as this statistic may be, particularly to Californians, counsel has not explained how it relates to counsel's prior argument. The petitioner has not shown that California's low ranking results from a shortage of qualified teachers, and even if it did, this has nothing to do with a *national* shortage of teachers.

Also, it is the nature of rankings of this kind that *some* state must necessarily rank second to last. The petitioner does not explain why it is of particular concern that California, instead of, say, Maine or Illinois, happens to be that state. The statistic is relevant for the petitioner because the petitioning school district happens to be in California, but this fact brings us back from the national level to the local level. The

beneficiary's admission, by itself, would have a negligible impact on a nationwide or even statewide shortage of math teachers.

More fundamentally, if a particular school is having difficulty locating a qualified teacher, it matters little for our purposes whether this difficulty arises from a local or national teacher shortage. Either way, the labor certification allows an avenue by which the school can demonstrate that its good faith efforts to recruit a qualified U.S. worker have been fruitless.

With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages. Similarly, the Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question. *Matter of New York State Dept. of Transportation* at 218. Counsel, in effect, seems to argue that the shortage of teachers is so serious that the petitioner ought not to be required to prove (via labor certification) that the shortage, in fact, exists.

Counsel claims that the beneficiary serves the national interest to a "substantially greater" extent than "others in the teaching profession." To support this claim, counsel lists the beneficiary's academic credentials, including a doctorate from Brigham Young University, and states: "Further, the alien is credentialed by the state of California as a mathematics teacher" (an assertion that presumes that most California mathematics teachers have no credentials). These facts establish that the beneficiary is a competent teacher who is qualified to teach mathematics in California, but neither the director nor the AAO ever contested these facts.

We note, here, section 203(b)(2)(C) of the Act:

> In determining . . . whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

Pursuant to section 203(b)(2)(A) of the Act, exceptional ability is not, by itself, sufficient grounds for a waiver of the job offer requirement.

As the above shows, counsel argues on motion that the beneficiary's degree and certification qualifies her for the waiver. The statute itself, however, indicates that a degree and certification do not suffice to establish exceptional ability, and even if they did, exceptional ability does not suffice to qualify an alien for a waiver.

Counsel cites international testing statistics to show that "math teachers in different communities can cumulatively [have an] effect on a national level." The AAO, in its prior decision, had stated: "the issue is not the cumulative impact of thousands of teachers nationwide, but the impact of the beneficiary's own activities." Cumulative impact is relevant to the question of intrinsic merit, but no one in this proceeding has questioned the intrinsic merit of teaching mathematics. The intrinsic merit of the petitioner's profession, however, does not translate into a finding that qualified alien math teachers are collectively exempt from the

job offer requirement that Congress wrote into law. Counsel, by repeating an argument that the AAO had already rebutted, brings the petition no closer to approval.

Counsel, on motion, repeats variations of arguments previously advanced on appeal by the petitioner's prior attorney. In essence, counsel argues that the beneficiary qualifies for the waiver because she is well-qualified in a field in which demand for qualified workers exceeds supply. The AAO has now, on two occasions, explained why these arguments are fatally deficient. Eligibility for the national interest waiver rests on the particular circumstances of individual aliens. There is no basis in the statute, regulations, or case law for a blanket waiver for qualified math teachers, but this seems to be basically what counsel seeks.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The AAO's decision of March 8, 2006 is affirmed. The petition remains denied.